

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KATRINA STEWART,

§

§ No. 692, 2010

Respondent Below,

§

Appellant,

§ Court Below – Family Court

§ of the State of Delaware,

v.

§ in and for New Castle County

§ File No. 10-07-03TN

DIVISION OF FAMILY SERVICES, §

§

Petitioner Below,

§

Appellee.

§

Submitted: May 11, 2011

Decided: May 24, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

O R D E R

This 24th day of May, 2011, it appears to the Court that:

1) The respondent-appellant, Katrina Stewart (“Stewart” or the “Mother”), appeals from a Family Court order terminating her parental rights to Donald, her minor child.¹ On appeal, the Mother claims that the Family Court erroneously terminated her parental rights to Donald, because the Division of Family Services (“DFS”) failed to use reasonable efforts to reunify her and Donald. We have determined that the Mother’s claim of

¹ The Court, *sua sponte*, has assigned pseudonyms to the parties pursuant to Supreme Court Rule 7(d).

error is not supported by the record. Therefore, the judgment of the Family Court must be affirmed.

2) Stewart is the biological mother of three children, of which Donald is the youngest. On February 4, 2008, five days after Donald was born, the Family Court entered an *ex parte* order temporarily placing Donald in DFS's care based on a report alleging that the Mother was physically neglecting him. Donald was placed in the same foster home as his two older siblings, Nicholas and Roger, who were also in DFS's custody. Although Donald is the only subject of this appeal, the facts and circumstances relating to Donald's and his siblings' cases are intertwined, and warrant a brief discussion.

3) Eight months after Donald was born, in October 2008, the Family Court terminated the Mother's parental rights to Nicholas and Roger, both of whom had been in DFS's custody since November 2005. This Court affirmed that termination in *Stewart v. Department of Services for Children, Youth, and their Families* ("Stewart I").² One ground for that termination was the Mother's inability to comply with her case plan due to her mental illness.³ Specifically, the Mother was to participate in mental health

² *Stewart v. Department of Services for Children, Youth, and their Families*, 991 A.2d 750 (Del. 2010).

³ *Id.* at 755.

treatments and maintain regular visitation with her children, but failed to do so.⁴ An alternate ground for that termination was that the Mother had failed to plan for the care of her children, because her mental illness rendered her mentally incompetent and unable to discharge her parental responsibilities.⁵

3) In Donald's case, DFS did not prepare a separate case plan for him. Rather, DFS continued the already-existing plan created for Donald's older siblings, Nicholas and Roger. As part of that case plan, the Mother was to participate in mental health treatment at Connections, attend vocational training, and maintain regular visitation with her children. The Mother, however, did not participate in the necessary mental health treatments, and failed to regularly attend visitation, resulting in the termination of her parental rights to Nicholas and Roger in October 2008.⁶ Following that termination, DFS initiated a separate case plan for Donald, which incorporated the same requirements as the Mother's previous case plan for Nicholas and Roger.

4) A permanency hearing on Donald's care was held on April 27, 2009, at which the Family Court found that Donald remained dependent because the Mother was unable to care for him due to her mental health

⁴ See *id.* at 752-55.

⁵ *Id.* at 755, 758.

⁶ See *id.* at 752-55.

problems. Although the Mother was not complying with her case plan in that she had missed several scheduled visits with Donald and was not attending her mental health treatment, the Family Court concluded that reunifying Donald with the Mother or the Father remained the goal.

5) Efforts to place Donald with the Father were unsuccessful. DNA testing had confirmed that Donald's father was Richard Yates ("Yates" or the "Father"), who was living in Florida at the time. Yates' Florida home was not a viable placement option for Donald because Florida's Interstate Compact on Placement of Children ("ICPC") office had denied Yates' placement request based on his criminal history. At DFS's urging, the Father came to Delaware to attempt to establish residency. Shortly thereafter, the Father abruptly and without explanation stopped communicating with DFS and his attorney. As a result, DFS was not able to place Donald with the Father.

6) On August 20, 2009, DFS moved to change the goal from reunification to termination of parental rights and adoption, based on the Mother's failure to comply with her case plan and DFS's unsuccessful efforts in placing Donald with the Father. At an October 30, 2009 hearing, the Family Court concluded that because of the Mother's mental illness and her failure to attend scheduled visits on a regular basis, it was "unlikely that

Mother [would] be able to provide the necessary care for [Donald] in the foreseeable future.” The Court also found that the Father had failed to plan or demonstrate that he had the ability to care for Donald, because the Father was no longer in contact with DFS. For those reasons, the Family Court approved DFS’s goal change from reunification to termination of parental rights and adoption. An order to that effect was entered on January 29, 2010.

7) On March 19, 2010, the Family Court held another review hearing on Donald’s care. After receiving testimony from the Mother and Donald’s foster mother, the court determined that the Mother had attended less than half of her scheduled visits with Donald since August 19, 2009. Although the Mother testified that she had missed several of those visits because she was at a job interview and/or participating in vocational training, the Family Court found that testimony to be not credible. The court then scheduled a termination of parental rights hearing for June 21-22, 2010.

8) Following the June termination hearing, the Family Court issued an order terminating the Mother’s and the Father’s parental rights to Donald on October 1, 2010.⁷ The Family Court first took judicial notice of its previous order terminating the Mother’s parental rights to Nicholas and

⁷ The Father does not appeal the termination of his parental rights to Donald.

Roger in October 2008. After hearing testimony from the six DFS social workers that had been assigned to the Mother's case,⁸ the Family Court determined that DFS had made reasonable efforts to reunify the family and to prevent out-of-home placement. Specifically, the court found that DFS had made a good-faith effort to place Donald with maternal relatives by conducting home assessments and background checks, but ultimately determined that placement with those relatives was not in Donald's best interests. As noted, DFS had also made a good-faith effort to place Donald with Father, but that effort was also unsuccessful.

9) The Family Court also found that DFS had made reasonable efforts to reunify the Mother and Donald, but that the Mother was "unable to comply with the essential elements of the case plan." Although the Mother had obtained suitable housing and income through government assistance, she continued to miss scheduled visitations without explanation, and failed to understand and adequately address her mental health issues by repeatedly not complying with her mental health treatment plan. As a result, the court

⁸ Beginning in February 2008, Berlinetta Wright was assigned as Mother's primary case worker. Following Ms. Wright's retirement in July 2009, Meagan O'Brien was assigned to Mother's case until her departure from DFS in February 2010. Subsequently, three different caseworkers were assigned to Mother's case: Jamey Zebrowski (February 2010 to March 2010), Elizabeth Malgeire (April 2010 – May 2010), and Candice Murray (May 2010 – present).

found that the Mother's mental illness prevented her from being able to comply with her case plan and plan for Donald.

10) After weighing the eight statutory factors set forth in title 13, section 722 of the Delaware Code,⁹ the Family Court concluded that it was in Donald's best interest to terminate the Mother's parental rights, for three reasons. First, the Mother's mental health "prevent[ed] her from providing day-to-day care for [Donald]." Second, she "ha[d] not established a parent/child relationship with [Donald]" based on her failure to maintain regular visitation with him. Third, Donald's *guardian ad litem* also supported terminating the Mother's parental rights. The court also noted that the Mother had a still pending criminal charge for Offensive Touching dating back to February 2008.

11) Based on the evidence presented, the Family Court found that DFS had established, by clear and convincing evidence, at least two independent statutory grounds for terminating the Mother's parental rights to Donald. First, the Mother's parental rights to Donald's siblings, Nicholas and Roger, had been involuntarily terminated in a prior proceeding. Second, neither the Mother nor the Father was able to plan adequately for Donald's

⁹ Del. Code Ann. tit. 13, § 722 (listing eight relevant factors that the court must consider in determining whether termination of parental rights is in the best interests of a child).

physical needs, and mental and emotional health and development.¹⁰ The Mother appeals from those rulings.

12) On appeal, the Mother claims that the Family Court erred in terminating her parental rights to Donald, because there was insufficient evidence to support that court's conclusion that DFS had used reasonable efforts to reunify her and Donald. The Mother argues that "[b]ecause of the high turnover of DFS workers and lack of familiarity with the case by [those] DFS workers," the reunification process was "largely wasted." She further contends that DFS should have created a separate case plan that was tailored to Donald's case, rather than rely on the case plans created for Nicholas and Roger.

13) On an appeal from the Family Court this Court's standard and scope of review extends to a review of the facts and the law, as well as the inferences and deductions made by the trial judge.¹¹ Questions of law are reviewed *de novo*.¹² Where the trial court has correctly applied the law, we review only for an abuse of discretion.¹³ We will not, however, disturb findings of fact unless those findings are "clearly wrong."¹⁴ Nor will we

¹⁰ See Del. Code Ann. tit. 13, § 1103(a)(5).

¹¹ *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983).

¹² *Forrester v. Forrester*, 953 A.2d 175, 179 (Del. 2008).

¹³ *Jones v. Lang*, 591 A.2d 185, 186 (Del. 1991).

¹⁴ *Forrester v. Forrester*, 953 A.2d at 179.

substitute our own opinion for the inferences and deductions made by the trial court where those inferences are supported by the record and are the product of an orderly and logical reasoning process.¹⁵

14) Before terminating an individual's parental rights, the Family Court must make two separate determinations.¹⁶ First, the court must find a statutory basis for termination under title 13, section 1103 of the Delaware Code.¹⁷ Second, the court must determine that termination of parental rights is in the best interests of the child in light of the eight statutory factors enumerated in title 13, section 722(a).¹⁸ The Mother does not challenge the Family Court's latter conclusion—that termination of parental rights was in Donald's best interests. We, therefore, need only review the Family Court's first determination, that there was a statutory basis for termination.

15) Section 1103(a) sets forth eight grounds on which parental rights may be terminated.¹⁹ We have held that if the termination of parental rights is based *primarily* on the parent's failure to plan for the child's needs under section 1103(a)(5), DFS must prove by clear and convincing evidence that it "made bona fide reasonable efforts to reunite the family."²⁰ Whether

¹⁵ *Jones v. Lang*, 591 A.2d at 187.

¹⁶ *Brown v. Div. of Family Services*, 14 A.3d 507, 509 (Del. 2011).

¹⁷ *Id.*

¹⁸ *Id.* at 510.

¹⁹ Del. Code Ann. tit. 13, § 1103(a).

²⁰ *Stewart I*, 991 A.2d at 758.

DFS's efforts were reasonable is a fact-specific question addressed on a case-by-case basis.²¹

16) The Family Court found two independent statutory grounds for terminating Mother's parental rights to Donald: (1) the Mother's failure to comply with her case plan and plan for Donald, and (2) the previous termination of the Mother's parental rights to Nicholas and Roger, as upheld by this Court in *Stewart I*. Either of those two grounds was sufficient. Section 1103(a) provides that "[t]he procedure for termination of parental rights . . . may be initiated whenever it appears that . . . 1 *or more* of the following grounds exist"²²

17) Consequently, whether DFS used reasonable efforts to reunite the family, because the Family Court terminated the Mother's parental rights on an alternative ground under subsection (a)(6)—the prior involuntary termination of the Mother's parental rights to Donald's siblings, Nicholas and Roger.²³ Moreover, Section 1103(d) provides that DFS is "not required to perform [reunification services] when the grounds for termination of

²¹ *Id.* at 759 (noting that the reasonableness of DFS's reunification efforts must be "determined from the particular facts of each case").

²² Del. Code Ann. tit. 13, § 1103(a) (emphasis added).

²³ Del. Code Ann. tit. 13, § 1103(a)(6) ("The respondent's parental rights over a sibling of the child who is the subject of the petition have been involuntarily terminated in a prior proceeding.").

parental rights are those stated in paragraph (a)(2), (4), (6), (7), or (8).”²⁴

Thus, even though DFS continued to monitor the Mother’s progress with her mental health treatments and continued to provide the Mother with scheduled visitation, it was not mandated to do so. Therefore, this Court’s review does not require us to decide whether those efforts were reasonable.

18) Nevertheless, the record reflects that the Family Court did not err by concluding that DFS had used reasonable efforts to reunify the Mother and Donald. The Mother does not challenge the Family Court’s factual findings that she repeatedly missed scheduled visitation, and habitually failed to attend her scheduled mental health treatments. Nor does she contest the finding that DFS used reasonable efforts in attempting to place Donald with other family members. The fact that DFS did not create a separate case plan for Donald is not relevant, because the requirements of such a case plan—addressing her mental health issues, maintaining visitation, attending parenting classes, and securing employment training and housing—would have been identical to those in the case plan for Nicholas and Donald. It is also of no consequence that DFS assigned multiple case workers to the Mother’s case after her primary case worker retired in July 2009. There is no dispute that the Mother failed to meet her case plan’s requirements,

²⁴ Del. Code Ann. tit. 13, § 1103(d).

regardless of who her assigned case worker was. Given these undisputed facts, the Family Court correctly determined that DFS had used reasonable efforts in attempting to reunify the Mother and Donald.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgment of the Family Court is affirmed.

BY THE COURT:

/s/ Randy J. Holland
Justice